

# PROGRESSNOWNM

Engage. Persuade. Provoke.

October 15, 2013

Hon. Daniel Werfel  
Acting Commissioner, Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

Dear Commissioner Werfel:

I write to request an immediate investigation into the Foundation for Excellence in Education (EIN: 26-0615175), an organization recognized as tax exempt under section 501 (c)(3) by the Internal Revenue Service.<sup>1</sup> Based on documents acquired through public records requests in several states by In the Public Interest, the Foundation for Excellence in Education has failed to disclose payments—or as the Foundation calls them, scholarships—for public official travel on its Form 990s as required by the IRS. According to reimbursement forms and checks to state education departments and state education chiefs, the Foundation has withheld information on travel costs paid for at least three public officials in their 2010 and 2011 990s. It is possible these unreported payments to the government officials may be deemed to provide a private inurement. As such, the IRS should investigate to determine the extent of this scholarship program, assess any appropriate penalties, and take action to ensure that the public knows the extent to which the Foundation potentially has influence over state public officials.

Since at least 2010, the Foundation for Excellence in Education has spent at least \$1 million each year to convene a summit on education reform. According to their 990, the summit is to “arm lawmakers and policy shapers with the policies and strategies to improve the quality of education.” See Attachment 1 and 2 at page 2. The Foundation, though, fails to mention that a portion of these summits are spent with donors to the Foundation for Excellence of Education. See Attachment 3 also available at <https://www.documentcloud.org/documents/558544-12-033-documents-batch-5.html#search/p45/Change%20Donor%20Meetings> and Attachment 4 also available at <http://www.documentcloud.org/documents/783183-mary-laura-bragg-email-11-20-12-donor-meetings.html>. These donors, many of whom are for profit corporations selling education products, have scheduled meetings at the summit with the Chiefs for Change, a coalition of state school chiefs formally affiliated with the Foundation that often have significant authority over purchasing and policy in their states. *Id.*

Additionally, the Foundation fails to disclose on its 990s that it offers scholarships to pay for public official’s airfare, hotel rooms and meals to these summits. These are not scholarships in the traditional sense. They are not awarded in a competitive manner nor are they based on any

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<sup>1</sup> This letter is being submitted to the IRS to supplement Form 13909, and a copy is being sent to the Dallas office.

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sort of achievement. The only requirement of these scholarships seems to be that a person work in the state education department or be a lawmaker. For example, when the Florida Department of Education emailed the Foundation asking, “Also, why do you think I was told that I could register Mike Kooi as a scholarship recipient?” the Foundation responded, “He was awarded the scholarship because he is an employee in the Florida Department of Education, and because of his close work with the Commissioner.” See Attachment 5, also available at <http://www.documentcloud.org/documents/558595-iti-0047.html>. The unorthodox manner of these scholarships—and the fact that they are used as a vehicle to meet with for profit education corporations—further raises suspicions around the Foundation’s failure to properly disclose payment of travel expenses in 2010 and 2011. Additionally, it is possible these unreported payments to the government officials may be deemed to provide a private inurement in violation of IRS regulations.

The IRS requires 501(c)(3) organizations to disclose any payments for public officials’ travel or entertainment expenses. Specifically, Part IX of Form 990 includes a line entry for “Payments of travel or entertainment expenses for any federal, state, or local public officials.” See Form 990, Part IX, Line 18. An organization only needs to report these expenses if the expense, including reimbursements, for each public official exceeds \$1,000 for the year<sup>2</sup> and a “public official” includes a person who “holds an elective or appointive public office in the executive, legislative, or judicial branch of a State, possession of the United States, any political subdivision of such State or possession or the District of Columbia and whose gross annual compensation is at a rate of \$20,000.”<sup>3</sup>

Without question the state education heads who have their travel paid for by the Foundation are “public officials” under IRS regulations. As documented below, the Foundation exceeded the \$1000 reporting threshold a number of times in 2010 and 2011. Yet, both years it left the line entry for “Payments of travel or entertainment expenses for any federal, state, or local public officials” blank, implying that the Foundation did not pay for public official travel or entertainment expenses during those two years. While the IRS also allows for this expense to be reported on line 24 (“other expenses”), the Foundation did not report any travel expenses on this line either. See Attachment 1 and 2 at page 10.

In 2010, the Foundation paid, as a reimbursement, \$1,2269.20 for travel for then Louisiana State Superintendent of Education Paul Pastorek. See Attachment 6, also available at <http://www.documentcloud.org/documents/559599-louisiana.html>. In 2011, the Foundation paid, as a reimbursement, \$2,396.73 for travel for New Mexico Public Education Department Secretary Hanna Skandera and \$2,468.16 for travel for Oklahoma State Superintendent of Public Instruction Janet Barresi. See Attachment 7 also available

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<sup>2</sup> Instructions for Form 990 Return of Organization Exempt From Income Tax  
<http://www.irs.gov/instructions/i990/ch02.html#d0e9298>

<sup>3</sup> IRM 7.27.20.8 [http://www.irs.gov/irm/part7/irm\\_07-027-020.html](http://www.irs.gov/irm/part7/irm_07-027-020.html)

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<http://www.documentcloud.org/documents/558547-12-033-documents-batch-2.html> and Attachment 8 also available at <http://www.documentcloud.org/documents/783174-12-00082dl.html>.

The amounts that the Foundation paid to the education chiefs are likely the tip of the iceberg. The Foundation may pay for travel unrelated to the summit like, in September 2011, when it paid for New Mexico Public Education Department Secretary Hanna Skandera to travel to testify before the United State House Education and Workforce Committee. See Attachment 9, also available at <http://independentsourcepac.org/hanna-skandera-the-gift-act-restricted-donors-and-her-congressional-testimony.html>. Moreover, the agendas for the 2010 and 2011 education summits list at least five school officials and thirteen state lawmakers as participants, all of whom would be eligible for Foundation scholarships that could potentially be required to be reported on the Foundation's 990. See Attachment 10 also available at <http://excelined.org/national-summit/2010-agenda/> and <http://excelined.org/national-summit/2011-agenda/>. Finally, the Foundation is offering scholarships for public officials to attend this year's education summit. See <http://excelined.org/national-summit/apply-for-scholarship/>.

The materials referenced in this letter show that the Foundation for Excellence in Education has failed to disclose it paid for travel for public officials. Therefore, I respectfully request that the IRS conduct an immediate investigation and impose appropriate penalties.

Sincerely,



Patrick Davis  
Executive Director

Enclosures:

IRS form 13909, Tax-Exempt Organization Complaint Form  
Attachments referenced, 1-10.

*All enclosures are available in digital format online at*

<http://www.scribd.com/collections/4359624/IRS-complaint-RE-Chiefs-for-C>